

MARY SANFORD

IBLA 91-66

Decided May 24, 1994

Appeal from a decision of the Alaska State Office, Bureau of Land Management, vacating prior escrow memoranda, reallocating escrow funds previously disbursed, and requiring repayment of funds previously dis-bursed. AA-6714, AA-44583, AA-067674, and AA-6666-A.

Reversed in part and vacated in part.

1. Res Judicata

As a general rule, the principle of administrative finality, the administrative counterpart of the doctrine of res judicata, precludes reconsideration in a later case of matters resolved finally for the Department in an earlier appeal.

2. Act of Jan. 2, 1976--Administrative Authority: Generally--Res Judicata

Notwithstanding the principle of administrative finality, the Secretary or those exercising his delegated authority may reconsider a matter previously decided and correct or reverse an erroneous decision to the extent the Department has retained jurisdiction over the subject of the adjudication. With respect to administration of an escrow fund under P.L. 94-204 for revenue arising from use of lands withdrawn for Native selection, the jurisdiction of the Department ends with the disbursement of the funds subsequent to conveyance and a decision reconsidering the allocation of the disbursed funds and requiring repayment of those funds will be vacated for lack of jurisdiction.

APPEARANCES: James J. Benedetto, Esq., Anchorage, Alaska, for appellant; Roger L. Hudson, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management; Wilson Justin, President, Glennallen, Alaska, for Ahtna, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Mary Sanford has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 18, 1990, vacating BLM

escrow memoranda of February 16, 1984, and February 3, 1988, and recalculating the proper formula for disbursement of escrow funds previously disbursed pursuant to those memoranda. The decision required appellant to repay \$87,442.60 that she received from the escrow fund in 1988 for gravel removed from lands thought to be within her Native allotment application AA-6714.

This is the second time that an appeal regarding disbursement of funds in this escrow account has been before the Board. Much of the background of this matter is set forth in our prior decision, cited as Ahtna, Inc., 100 IBLA 7 (1987). Prior to the filing of appellant's Native allotment application, the State filed an application for a material site right-of-way (A-067674) to extract gravel for building the Tok highway on May 6, 1966, pursuant to provision of statute. 23 U.S.C. § 317 (1988). The right-of-way was granted by BLM on July 26, 1966. Subsequently, appellant filed a Native allotment application pursuant to the Alaska Native Allotment Act of 1906, 34 Stat. 197, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970) (repealed subject to pending applications, 43 U.S.C. § 1617 (1988)). The Native allotment conflicted in part with the right-of-way.

On December 18, 1971, the lands involved were withdrawn for selection by Native corporations under section 11(a) of the Alaska Native Claims Settlement Act (ANCSA). 43 U.S.C. § 1610(a) (1988). The lands embraced in appellant's Native allotment were subsequently selected by a Native corporation, but that conflict was resolved when Ahtna, Inc., relinquished its selection as to those lands which conflicted with the Sanford allotment. When the State desired to expand the right-of-way to mine additional gravel by adding the contiguous pit 18 extension, Ahtna and appellant consented only on the condition that the material be sold to the State with the proceeds to be placed in an escrow account pursuant to P.L. 94-204. 1/ Removal of gravel from the pit 18 extension commenced in August 1976 although the application to amend material site A-067674 was never approved.

The sale of gravel removed from the pit 18 extension was serialized as material sale AA-44583 and valued at \$124,918.00. Prior to survey of Sanford's parcel by U.S. Survey No. 9637, BLM believed that 90 percent of the gravel removed in 1976 came from Sanford's allotment and only 10 per-cent from Ahtna's selection. Subsequently, by memorandum dated February 16, 1984, BLM advised the Bureau of Indian Affairs (BIA) that 10 percent of the lands embraced in the pit 18 extension for which funds had been escrowed had been conveyed to Ahtna and payment of escrow funds to Ahtna in the amount of \$12,491.80 was authorized. 2/ Thereafter, by decision dated August 9, 1985,

1/ Act of Jan. 2, 1976, P.L. 94-204, § 2, 89 Stat. 1146, as amended by, Act of Dec. 2, 1980, P.L. 96-487, § 1411, 94 Stat. 2497, 43 U.S.C. § 1613 Note (1988). P.L. 94-204 authorized the Secretary to deposit in an escrow account the proceeds derived from contracts, leases, permits, rights-of-way, or easements pertaining to lands or resources of lands withdrawn for Native selection. Act of Jan. 2, 1976, § 2, 89 Stat. 1146.

2/ Section 2(a)(3) of P.L. 94-204 provides in part that "[i]n the event that a conveyance does not cover all of the land embraced within any" agreement covering use of the land:

BLM directed that the balance of escrowed funds in the amount of \$112,426.20 be deposited in the general fund of the U.S. Treasury. Cross appeals of this BLM decision were filed by Sanford, Ahtna, the State of Alaska, and the Federal Highway Administration. In Ahtna, the Board reversed the BLM decision, holding that legal authority for the sale of the gravel from the pit 18 extension was provided by P.L. 94-204 and that distribution of proceeds escrowed from use of withdrawn lands within the Sanford allotment was authorized to be made to Sanford. 100 IBLA at 18. The allocation of escrowed funds between Ahtna and Sanford was not at issue in our prior decision. We found that Ahtna's claim in that case to a larger share of the escrow fund was not timely in light of the failure to appeal the February 1984 memorandum allocating 10 percent of the escrow funds to Ahtna. Accordingly, Ahtna's appeal of the BLM decision was dismissed. 100 IBLA at 18-19.

The escrow memoranda that BLM vacated in its latest decision (now under appeal) were prepared prior to survey of Sanford's Native allotment. U.S. Survey No. 9637, filed on March 28, 1990, caused BLM to re-examine its disbursement of escrow funds, because the survey revealed that appellant's allotment was located approximately 920 feet west of where it had been previously thought to be. The effect of this finding was to reduce the amount of gravel that had been removed from Sanford's parcel and to increase the amount of gravel removed from the adjacent parcel owned by Ahtna. Accordingly, the BLM decision required that Sanford repay \$87,442.60 in principal, plus any interest disbursed on that principal, as well pay interest at the rate of 10.5 percent on the amounts found to have been disbursed in error. The decision recited that once the funds were paid back into escrow they would then be paid to Ahtna.

In Ahtna, supra, the Board expressly found that a material sale had occurred of the gravel at issue. 100 IBLA at 7, 18. BLM had argued in favor of such a finding, contrary to the view expressed by Sanford and Ahtna. Both Sanford and Ahtna had contended that the State's removal of gravel was a trespass, despite the fact that each had signed a conditional statement of nonobjection.

fn. 2 (continued)

"[T]he Corporation or individual shall only be entitled to the proportionate amount of the proceeds, including interest accrued, derived from such contract, lease, license, permit, right-of-way, or easement, which results from multiplying the total of such proceeds, including interest accrued, by a fraction in which the numerator is the acreage of such contract, lease, license, permit, right-of-way, or easement which is included in the conveyance and the denominator is the total acreage contained in such contract, lease, license, permit, right-of-way, or easement." Act of Jan. 2, 1976, P.L. 94-204, § 2(a)(3), 89 Stat. 1146, as amended by, Act of Dec. 2, 1980, P.L. 96-487, § 1411, 94 Stat. 2497, 43 U.S.C. § 1613 Note (1988). This was similar to the prorata acreage-based formula for apportioning proceeds of outstanding contracts, leases, etc., found at section 14(g) of ANCSA, 43 U.S.C. § 1613(g) (1988).

After survey of Sanford's allotment, BLM now calculates that 70 percent of the pit 18 extension surface area is within Ahtna's land. Only 30 percent of the pit 18 extension surface area is within Sanford's allotment.

BLM's decision of October 18, 1990, does not, however, direct repayment of escrow funds in such a way that Sanford keeps 30 percent. The agency has rather concluded that its division of escrow funds based upon surface area was incorrect. Because the proceeds from sale of the gravel were based on the volume of gravel removed from the land, BLM found that application of the statutory proviso for trespass damages "seems much more appropriate" (Decision at 2). BLM looks now to section 1411(a) of the Alaska National Interest Lands Conservation Act (ANILCA), amending section 2(a), P.L. 94-204, 43 U.S.C. § 1613 note (1988). This statute now provides that if a conveyance does not cover all of the land embraced in a trespass, "the conveyee shall be entitled to the proportionate share of the proceeds, including a proportionate share of interest accrued, in relation to the damages occurring on the respective lands during the period the lands were withdrawn for selection" (Emphasis added). Application of this statutory provision is now appropriate, BLM concludes, because the State's gravel extraction, "with the benefit of hindsight," can fairly be characterized as having been trespassory in nature (Decision at 3).

In its decision of October 18, 1990, BLM has determined that materials removed by the State were obtained in greater volume and depth from Ahtna's lands than previously believed. Volume removed per surface unit was disproportionate (Decision at 3). The agency now estimates that 80 percent of the total gravel paid for by the State came from excavation of the Ahtna side of the pit 18 extension, and 20 percent came from Sanford's land. Escrow principal should have been divided in like proportions, BLM states.

In view of the newly established facts provided by U.S. Survey 9637 and a revised analysis grounded on section 1411(a), BLM has vacated its escrow memoranda of February 16, 1984, and February 3, 1988, which called for Ahtna to receive 10 percent of escrow proceeds and Sanford 90 percent. Of the 90 percent (or \$112,426.20 plus interest) paid to Sanford in 1988, BLM now has determined that Sanford should be required to reimburse the escrow account \$87,442.60 plus proportionate interest disbursed (Decision at 4). The BLM decision also decrees that interest at 10.5 percent is also due and owing from the date of her receipt of the overpayments until the date of repayment. Id.

As authority for its action, BLM relies upon "the inherent power and obligation of an agency to correct its own mistakes." 3/ Upon the filing of U.S. Survey 9637, BLM explains, it concluded that "it had distributed the escrow proceeds in error, and that such error had deprived Ahtna of the substantial financial benefit to which it was entitled under ANILCA § 1411" (Answer of BLM, June 14, 1991, at 10).

3/ Letter to Mary Sanford from Roger L. Hudson, Esq., Office of the Regional Solicitor, dated Sept. 14, 1990 (Exh. A to Statement of Reasons at 3).

Sanford challenges BLM's decision of October 18, 1990, arguing that BLM has no administrative authority to vacate or reconsider the Board's final decision in Ahtna. It characterizes BLM's decision as a "thinly disguised attempt to provide Ahtna with an appeal, despite the fact that the IBLA dismissed Ahtna's appeal as untimely" (Statement of Reasons Apr. 25, 1991, at 8). If BLM is allowed to skirt the jurisdictional requirement of a timely appeal, parties to numerous transactions "will forever be held hostage to the possibility that an agency may have erred, or may find a new interpretation of its regulations more favorable to litigious-minded claimants." Id. at 10.

Sanford further argues that the doctrine of administrative finality bars readjudication of Ahtna's proportion of the escrow funds. In support, she cites Village of South Naknek, 85 IBLA 74, 76 (1985), which states: "When a final Departmental adjudication has been made, the doctrine of administrative finality, the administrative counterpart of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same claim and issues."

Assuming, arguendo, that BLM had jurisdiction to recalculate escrow distribution, Sanford contends that equitable estoppel bars any repayment of funds. This extraordinary remedy is appropriate here, appellant argues, because BLM has put appellant at risk, in total disregard for her rights as an individual citizen and in derogation of the trust responsibility owed to her as an Alaska Native, in order to curry favor with Ahtna and thereby avoid a threatened lawsuit.

Appellant further charges that she had no notice of any recalculation proceeding, nor was she afforded a meaningful opportunity to challenge evidence relied upon by the agency. She describes as "exceedingly thin" the findings of John Rego and Dale Tubbs, which BLM relied upon to conclude that the volume of gravel removed per surface unit was "disproportionate."

BLM's decision of October 18, 1990, is inconsistent with the Board's decision in Ahtna in certain key respects. First, BLM has changed the legal basis for calculating the division of escrow proceeds between Ahtna and Sanford. Its prior reliance on a prorata division according to surface acreage as recognized in section 14(g) of ANCSA and invoked in the first provision of section 2(a)(3) of P.L. 94-204, as amended, has been replaced by application of the trespass provisions of section 2(a)(3) providing for allocation of escrowed sums according to damages incurred. ^{4/} Key to this

^{4/} With respect to the allocation of trespass damages upon conveyed lands, the statute provides that: "the conveyee shall be entitled to the proportionate share of the proceeds, including a proportionate share of interest accrued, in relation to the damages occurring on the respective lands during the period the lands were withdrawn for selection." Act of Jan. 2, 1976, P.L. 94-204, § 2(a)(3), 89 Stat. 1146, as amended by, Act of Dec. 2, 1980, P.L. 96-487, § 1411, 94 Stat. 2497, 43 U.S.C. § 1613 Note (1988).

change is the recharacterization of the State's gravel removal as a trespass. This recharacterization is at odds with the agency's prior position and with the prior finding of the Board in this matter. Absent a finding of trespass, a division of funds according to surface acreage is indicated. P.L. 94-204, section 2(a)(3), 43 U.S.C. § 1613 note (1988).

[1] As a general rule, the principal of administrative finality precludes reconsideration in a later case of matters resolved finally for the Department in an earlier appeal. Under the doctrine of administrative finality--the administrative counterpart of the doctrine of *res judicata*--when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice. Melvin Helit v. Goldfields Mining Corp., 113 IBLA 299, 308-09, 97 I.D. 109, 114 (1990); Lloyd D. Hayes, 108 IBLA 189, 192-93 (1989); Turner Brothers, Inc. v. OSMRE, 102 IBLA 111, 120-21 (1988). No legal basis has been given by BLM, either in the decision below or in the brief on appeal, for this new determination that removal of the gravel constituted a trespass and it is contrary to our finding on appeal reached after briefing by the parties. The doctrine of administrative finality precludes a finding by BLM at this time that the gravel was removed in trespass and, hence, this ruling in the BLM decision is reversed.

The new BLM decision in this matter endeavors to reallocate the proceeds of the gravel sale, relying upon an actual survey, U.S. Survey 9637, rather than the prior projection of the location of the Sanford-Ahtna boundary. No challenge has been made to the accuracy of the boundaries fixed by this survey. As noted above, this survey caused BLM to find that only 30 percent (rather than 90 percent) of the pit 18 extension surface area lies within Sanford's allotment. The difficulty lies not in the fairness of changing the allocation to reflect the accurate boundaries, but in the fact that BLM no longer has an escrow fund to disburse to the respective claimants.

BLM's authority to deal with funds deposited by the State into escrow is found in section 1411 of ANILCA. This section provides:

During the period of the appropriate withdrawal for selection pursuant to the Settlement Act, any and all proceeds derived from contracts, leases, licenses, permits, rights-of-way, or easements, or from trespass occurring after the date of withdrawal of the lands for selection, pertaining to lands or resources of lands withdrawn for Native selection pursuant to the Settlement Act shall be deposited in an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting Corporation or individual entitled to receive benefits under such Act.

* * * * *

(3) Such proceeds which have been deposited in the escrow account shall be paid, together with interest accrued by the Secretary to the appropriate Corporation or individual upon conveyance of the particular withdrawn lands. In the event that a conveyance does not cover all of the land embraced within any contract, lease, license, permit, right-of-way, easement, or trespass, the Corporation or individual shall only be entitled to the proportionate amount of the proceeds, including interest accrued, derived from such contract, lease, license, permit, right-of-way, or easement, which results from multiplying the total of such proceeds, including interest accrued, by a fraction in which the numerator is the acreage of such contract, lease, license, permit, right-of-way, or easement which is included in the conveyance and the denominator is the total acreage contained in such contract, lease, license, permit, right-of-way, or easement; in the case of trespass, the conveyee shall be entitled to the proportionate share of the proceeds, including a proportionate share of interest accrued, in relation to the damages occurring on the respective lands during the period the lands were withdrawn for selection. [Emphasis added.]

[2] The doctrine of administrative finality is not an absolute rule because decisions of BLM administrative officials, as well as decisions of the Board, are made pursuant to authority delegated by the Secretary of the Interior. The Secretary or those exercising his delegated authority may review a matter previously decided and correct or reverse an erroneous decision. Lloyd D. Hayes, 108 IBLA at 193; see 50 C.J.S. Judgments § 606 (1947). An essential prerequisite of such authority, however, is the continued jurisdiction of the Department over the subject matter of the adjudication, usually requiring retention of title to the tract of land involved. See Gabbs Exploration Co. v. Udall, 315 F.2d 37, 40 (D.C. Cir. 1963), cert. denied, 375 U.S. 822 (1963). In this case, the subject of the adjudication is the escrow fund. Once the agency has paid out escrow funds in accordance with the statutory terms above, section 1411 provides no authority to administratively recover any amounts that the agency may later conclude have been overpaid. Having paid out all escrow funds in 1988, BLM had no further authority to adjudicate entitlement to these funds. Its authority to act, like the funds themselves, had been divested. Lacking such authority, BLM could not by decision direct Sanford to repay those amounts now regarded as overpaid. This Board has previously held that "[a]wards of compensation in the form of monetary damages for breach of contract or other potentially actionable conduct are beyond the scope of the jurisdiction delegated to the Board." George H. Ruth, 121 IBLA 31, 36 (1991); see Exxon Corp., 95 IBLA 374 (1987). Accordingly, the BLM decision of October 18, 1990, must be vacated for lack of jurisdiction to the extent it ordered appellant to repay escrow funds previously disbursed together with interest on such sums.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is reversed in part and vacated in part.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge